UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JASON PITRE,	Civil Action No.
Plaintiff,	**COMPLAINT**
-against-	Jury Trial Demanded
IVCI, LLC,	
Defendant.	

Plaintiff, by his attorneys, Slater Slater Schulman LLP, complaining of Defendant, respectfully alleges, upon information and belief, the following:

NATURE OF THE ACTION

1. Plaintiff worked for Defendant as the Manager and Director of Human Resources from approximately October 2011 through March 30, 2015, at Defendant's video conferencing company known as IVCi, in the County of Suffolk, State of New York.

2. Plaintiff brings this action against Defendant for discriminatory acts in which Plaintiff was subjected to a hostile work environment, retaliated against and terminated based upon his gender, sexual orientation, disability, and for taking medical leave in violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), the Family Medical Leave Act ("FMLA") and the New York State Human Rights Law ("NYSHRL").

3. "Stop being a woman", "it is barbaric to be part of same sex relationships", "from a woman's perspective how would you handle this situation", "are you the woman or the bitch in your relationships", are a few examples of the derogatory language and disturbing harassment Plaintiff suffered on a routine basis by Defendant's Senior Vice President of Operations, Curtis

Heath (hereinafter referred to as "Mr. Heath"), throughout his employment based upon his status as a gay male.

4. While Plaintiff and Mr. Heath's relationship was initially amicable and professional, upon Mr. Heath discovering that Plaintiff was homosexual, Mr. Heath immediately displayed a perverse interest in Plaintiff's sexuality. Mr. Heath would inappropriately inquire into what Plaintiff's sex life was like, how many partners he had, and if he was solicited for sex in specific places. Thereafter, Plaintiff's sexuality became a topic of open discussion, mockery and denigration by Mr. Heath in which Defendant's Vice President of Administration, Karen Cantalupo (hereinafter referred to as "Ms. Cantalupo") also became an active participant.

5. Determined to be successful in his position, Plaintiff continued to work hard and did his best to ignore the harassment. Based upon his exemplary performance, Plaintiff received a promotion by Defendant's President to Director of Human Resources in April 2014. However, the celebration was short lived as Mr. Heath and Ms. Cantalupo immediately confronted Plaintiff and admonished him for not receiving Mr. Heath's permission to receive the promotion and advised Plaintiff they would do everything it took to make ensure that Plaintiff failed in his new position as Director of Human Resources.

6. At about the same time as Mr. Heath and Ms. Cantalupo's promise to seek revenge against Plaintiff, Plaintiff received the unfortunate news that his brother was diagnosed with cancer. To Plaintiff's dismay, upon informing Mr. Heath and Ms. Cantalupo of his brother's illness, the harassment continued unabated.

7. Thereafter, the routine derogatory and demeaning statements to Plaintiff (i.e. "be a man", "stop being a woman", "being gay is unnatural") became angry and aggressive in tone. Plaintiff found himself the target of constant criticism and reprimand, and the incidents of

harassment grew in severity. In one occurrence, Mr. Heath viewed a video in front of Plaintiff of a male being violently attacked for attempting to kiss another male while Mr. Heath hysterically laughed. In another incident, Mr. Heath and Ms. Cantalupo organized a marketing event in which Defendant's employees dressed up as clowns. While each of the employees was permitted to choose the items they wore, Mr. Heath and Ms. Cantalupo required Plaintiff to wear a rainbow colored feather boa and hat and instructed him to act "flamboyant".

8. Suffering through the increasing barrage of harassment, insult and ridicule, Plaintiff found his ability to perform his duties increasingly difficult and as a result suffered from depression. After a violent incident in which Mr. Heath screamed in Plaintiff's face in a threatening and ominous manner, "you're a fucking idiot", that brought all of the surrounding employees to silence, Plaintiff finally felt broken and severely depressed. As a result, Plaintiff took FMLA leave in October 2014.

9. Without skipping a beat, Mr. Heath capitalized on the circumstances and sent a letter to Plaintiff advising Plaintiff that his position would not be reinstated as he was a key employee. Plaintiff responded to Mr. Heath that he was not a key employee, after which Mr. Heath wrote further correspondence criticizing Plaintiff for taking FMLA leave, accusing Plaintiff of misconduct and performance issues, which would be discussed immediately upon Plaintiff's return. Furthermore, Mr. Heath required Plaintiff to pay for health benefits a practice that had not been done previously.

10. Upon returning to work in January 2015, Plaintiff was immediately written up by Mr. Heath, severely reprimanded for taking FMLA leave as well as for "campaign[ing] privately" for a promotion in April 2014. Thereafter, Mr. Heath no longer greeted, acknowledged or even looked at Plaintiff.

11. Plaintiff noticed that a new employee was hired who had previously worked with Mr. Heath for ten years, and that she was performing most of Plaintiff's duties. Further, Plaintiff discovered that his confidential medical information was accessible to numerous employees and his computer access was revoked, which severely inhibited Plaintiff's ability to perform his job.

12. Of little surprise, Plaintiff was terminated by Mr. Heath on March 30, 2015. Mr. Heath told Plaintiff that Plaintiff had gained weight, "needed to go to the gym" and to "take this time to get yourself [Plaintiff] right". After being escorted off the premises by a gleeful Mr. Heath, Plaintiff received an email notification that the employee performing his duties was being promoted to Director of Human Resources.

PARTIES

13. Plaintiff was and still is a resident of the County of Suffolk, State of New York.

14. Plaintiff is a covered employee within the meaning of Title VII, 42 U.S.C. § 2000e *et seq.*; the ADA, 42 U.S.C. § 12111(4); FMLA, 29 U.S.C. § 2611(2); and NYSHRL, N.Y. Exec. Law § 290 *et seq.*

15. Defendant IVCI, LLC (hereinafter referred to as " Defendant" or "IVCi") was and still is a foreign corporation organized and existing by virtue of the laws of the State of Delaware with its principal place of business located at 601 Old Willets Path, Hauppauge, New York 11788.

16. Defendant was and still is authorized to transact business within the State of New York.

17. Defendant employs over one hundred fifty employees.

18. Defendant is a covered employer with the meaning of Title VII, 42 U.S.C. § 2000e *et seq.*; ADA, 42 U.S.C. § 12111(5); FMLA, 29 U.S.C. § 2611(4); and New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*

VENUE

19. This Court has jurisdiction based upon federal question and pursuant to the Constitution of the United States, 42 U.S.C. §§ 1331 and 1343; Title VII, 42 U.S.C. § 2000e *et seq.*; ADA, 42 U.S.C. 12101 *et seq.*; FMLA, 29 U.S.C. 2611 *et seq.*; and NYSHRL, N.Y. Exec. Law § 290 *et seq*.

20. This Court has supplemental jurisdiction of the claims arising under the New York State Human Rights Law pursuant to 28 U.S.C. § 1367, in that the New York State law claims are so closely related to Plaintiff's Title VII, ADA and FMLA claims as to form the same case or controversy under Article III of the United States Constitution.

21. Venue is proper in this judicial district under 28 U.S.C. § 1391, as a substantial part of the events and omissions giving rise to the claims occurred in this judicial district and Defendant transacts substantial business within this judicial district.

22. Compensatory and punitive damages are sought pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

23. Costs and attorney's fees may be awarded pursuant to 29 U.S.C. § 621 *et seq.*, and Rule 54 of the Federal Rules of Civil Procedure.

EEOC

24. On or about October 13, 2015, Plaintiff filed a Verified Charge with the Equal Employment Opportunity Commission ("EEOC").

25. Plaintiff's Verified Charge set forth Defendant's unlawful employment discrimination practices, including, creating a hostile work environment, retaliating against and terminating Plaintiff based upon Plaintiff's gender, sexual orientation, disability, and for Plaintiff taking FMLA leave.

26. The EEOC assigned Charge Number 520-2016-00152 to Plaintiff's Verified Charge.

27. On or about August 25, 2016, Plaintiff was issued a Right to Sue letter by the EEOC.

FACTS

I. Background

28. Formed by Robert Swing in 1995, Defendant IVCI is a collaboration solutions company that sets up and installs video conferencing equipment for businesses. Defendant also provides concierge service to manage video conferences for businesses.

29. Defendant transacts business nationwide and maintains its headquarters at 601 Old Willets Path, Hauppauge, New York 11788.

30. The following is a list of the parties relevant to this action:

- Curtis Heath – Senior Vice President of Operations;
- Karen Cantalupo – Vice President of Administration;
- Robert Swing – Chief Executive Officer ("CEO");
- Tim Hennen – Vice President;
- Adam Kaiser – Assistant Vice President of Marketing;
- Deneen Brown – Human Resources Assistant;
- Radha Ramchandran – Comptroller; and
- Jennifer Jasinski – Human Resources Assistant

31. At all relevant times, Plaintiff is a homosexual male.

32. Plaintiff was hired at Defendant's headquarter in Hauppauge by Mr. Heath for the full-time position of Human Resources Manager in or about October 2011.

33. At all relevant times, as Senior Vice President of Operations, Mr. Heath was one of the highest ranked officers and/or principals of IVCi and was second in command only to the CEO of IVCi Mr. Swing.

34. Plaintiff was hired at a salary of $75,000.00.

35. As a HR Manager, Plaintiff was responsible for more than one hundred and fifty employees. Plaintiff's duties included without limitation, employee relations, recruiting, payroll duties, employee benefits (i.e., 401k, Workers' Compensation).

II. Performance Evaluation

36. In or about May 2012, an employee performance appraisal was conducted by Mr. Heath regarding Plaintiff's work performance. In the evaluation, Mr. Heath stated the following:

- "Jason joined IVCi in Fall 2011 as a seasoned HR Professional and quickly transitioned into his new role with the company without having the availability to any predecessors. Jason's in-depth knowledge of the field allowed him to identify areas requiring immediate attention and acted with timely, successful remedy while being able to maintain all diverse, day-to-day responsibilities of the Human Resources Department."

- "Jason has positioned himself as being an approachable and personal point of contact for all of IVCi's HR matter and effectively responds to the needs of employees and managers which range in complexity and needed level of sensitivity. Jason quickly made himself known as the subject matter expert in all areas of Human Resources for the entire employee population."

- "Jason is able to recognize the immediate HR needs of IVCi and is able to prioritize the demands of his position in order to meet time-sensitive needs of the company as they arise. He is organized and detail oriented which enables him to balance and manage all objectives of his position without any compromise to the quality of the work he constantly delivers."

III. Purple Dress Shirt Incident and Discovery of Plaintiff's Sexual Orientation

37. In or about early 2012, Plaintiff wore a purple colored dress shirt to work.

38. When Mr. Heath saw Plaintiff he laughed in front of other employees and stated to Plaintiff that it was a "feminine" color to wear and that it was a "woman's blouse".

39. Later that day, Mr. Heath privately told Plaintiff that he should avoid wearing the shirt again.

40. Following this incident, in or about early 2012, Mr. Heath took Plaintiff out to lunch at Subway.

41. While eating at Subway, Mr. Heath asked Plaintiff if he was gay and Plaintiff answered affirmatively.

42. In response, Mr. Heath stated he thought Plaintiff was gay because of Plaintiff's "feminine mannerisms", the way Plaintiff spoke and because of the day Plaintiff wore a purple dress shirt to work.

43. Mr. Heath further stated that he did not pick up on Plaintiff being gay during Plaintiff's interview.

44. Mr. Heath then asked Plaintiff a series of inappropriate and personal questions. These questions included, without limitation, the following:

- "How did you know you were gay?"
- "What has your sexual interaction been like?"
- "Who have you had sex with?"
- "How many men have you been with?"

45. While the work relationship between Plaintiff and Mr. Heath was initially cordial and professional, following Mr. Heath's discovery of Plaintiff's sexual orientation, Mr. Heath began regularly discussing and making extremely offensive and demeaning statements in the workplace regarding Plaintiff's sexual orientation.

46. Further, Mr. Heath notified various employees at IVCi of Plaintiff's sexual orientation, despite being aware that Plaintiff did not want his sexual orientation to be openly disseminated.

IV. Statement Regarding Plaintiff's Break-Up

47. In or about January 2013, Plaintiff's relationship with his boyfriend ended.

48. Mr. Heath asked Plaintiff why he seemed upset and Plaintiff explained to Mr. Heath that he had recently broken up with his boyfriend.

49. In response, Mr. Heath stated to Plaintiff "now you can go out and find a bitch rather than being the bitch."

V. Weekly HR Meetings

50. Throughout his employment, Plaintiff was regularly required to report to Mr. Heath for individual manager cadence meetings as well as weekly manager group meetings.

51. The purpose of the cadence and manager group meetings was to provide status updates on the HR Department.

52. Ms. Cantalupo was frequently present during the meetings with Plaintiff and Mr. Heath.

53. At all relevant times, as Vice President of Administration, Ms. Cantalupo was one of the highest officers and/or principals of IVCi.

54. During each HR meeting, Plaintiff's sexual orientation was discussed by Mr. Heath and Ms. Cantalupo. Such discussions by Mr. Heath and Ms. Cantalupo entailed the following:

- Inquiries of how many men Plaintiff had sexual relationships with.
- Questions regarding Plaintiff's role in his relationship. Specifically, what sexual role Plaintiff played, who was dominant in the household, whether Plaintiff was the "bitch" or "woman" in the relationship, etc.
- Questions by Mr. Heath to Plaintiff that were sexual in nature, together with Mr. Heath pretending to gag/vomit even though Plaintiff would often not answer such questions.
- Discussions of how Jason would "find" other gay men.

55. Mr. Heath and Ms. Cantalupo also frequently made insulting and offensive statements to Plaintiff during the meetings. Many of these statements were regularly repeated and included, without limitation, the following:

- "You are acting like a woman";
- "Stop being a woman";
- "Be a man";
- "Being gay is unnatural and goes against animalistic tendencies";
- "Where I'm from in Texas, homosexuals are not accepted";
- "It is barbaric to be part of same sex relationships";
- "It is animals' natural instinct to mate with the opposite sex for pro-creation";
- "We're all women here let's talk about women things".

56. From approximately September 2013 through March 2014, Jennifer Jasinski worked in the HR Department and attended each weekly meeting with Plaintiff and Mr. Heath.

57. During the meetings, Ms. Jasinski witnessed the frequent discussions and statements regarding Plaintiff's sexual orientation and Plaintiff's failure to meet the male gender stereotype that Mr. Heath expected.

58. In one such incident, Mr. Heath stated during a meeting with Plaintiff and Ms. Jasinski, "from a woman's perspective how would you handle this situation?" Ms. Jasinski asked Mr. Heath if he was speaking to her and Mr. Heath stated "no, Jason".

59. After becoming increasingly upset and disturbed by the discussions and comments regarding Plaintiff's sexual orientation and gender, in or about March 2014, Ms. Jasinski asked Plaintiff if she could be excused from attending any further HR meetings. Plaintiff granted this request.

VI. Promotion to HR Director

60. Based upon Plaintiff's exemplary performance throughout his employment, in or about April 2014, Plaintiff was promoted by Mr. Swing from Human Resources Manager to Human Resources Director. Plaintiff additionally received a salary increase from $75,000.00 to $90,000.00.

61. Following the announcement of Plaintiff's promotion, Plaintiff was confronted in the parking lot outside of IVCi by Mr. Heath and Ms. Cantalupo.

62. During the confrontation, Mr. Heath and Ms. Cantalupo berated Plaintiff for allegedly going behind their backs to speak to Mr. Swing about a promotion.

63. At no time was there any requirement that Plaintiff request permission from Mr. Heath and Ms. Cantalupo to seek a promotion.

64. Mr. Heath and Ms. Cantalupo ended the conversation with Plaintiff stating “you will not get any more help from us”, and “we will make sure HR fails”.

VII. Incidents Involving Defendant’s President and Vice President

65. In or about Winter of 2013-2014, a vendor marketing event was held by Defendant and/or in which Defendant was a participant.

66. One of the external vendors who attended the event conducted a motivational meeting with wine tasting for Defendant’s employees.

67. After the event, Mr. Swing stated that the vendor was “gay” and he did not want the vendor receiving any further invitations to Defendant’s marketing events.

68. On at least three separate occasions, including in 2014, Mr. Swing, Mr. Heath and Adam Kaiser, went outside into the parking lot of IVCi to smoke cigarettes.

69. During each of the aforesaid incidents, Mr. Swing stated to Mr. Heath and Mr. Kaiser “did you know that Jason takes it in the ass.”

70. In or about December 2014, a Christmas party was held by Defendant for Defendant’s employees. During the party, Defendant’s Senior Vice President, Timothy Hennen arrived by himself. Thereafter, Mr. Heath made a series of comments in the presence of Mr. Swing and Mr. Hennen insinuating that Mr. Hennen and Plaintiff should be together romantically. Mr. Swing eventually stated to Mr. Heath “you better stop before you get me sued”.

71. Throughout 2013-2014, on at least five occasions, Mr. Heath made offensive remarks to Plaintiff regarding his sexual orientation while Mr. Hennen, was present. During each incident, Mr. Hennen remained silent and/or acquiesced in such discriminatory conduct and took no action against Mr. Heath.

72. In or about June 2014, Plaintiff was in a meeting with Mr. Hennen and Mr. Heath in Mr. Heath's office.

73. As Mr. Heath walked out of the room, he intentionally placed his notepad behind his buttocks with both hands as to imply that his body part was "off limits" to Plaintiff and laughed.

VIII. Summer of 2014

74. In or about April 2014, Plaintiff was informed that his brother, Edward Pitre, had cancer.

75. Plaintiff notified Mr. Heath and Ms. Cantalupo of the unfortunate news. However, this fell on deaf ears as Mr. Heath and Ms. Cantalupo continued to harass Plaintiff with increasing severity.

76. In or about June or July 2014, Mr. Heath spoke with Plaintiff and a co-worker, Jordan O'Neill. Mr. O'Neill was known as a highly religious individual.

77. Mr. Heath discussed Plaintiff's sexual orientation in front of Mr. O'Neill and stated to Plaintiff, "Jordan can save you from going to hell".

78. Upon information and belief, this statement was in reference to Plaintiff's sexual orientation. Plaintiff was severely humiliated by Mr. Heath informing Mr. O'Neill of his sexual orientation.

79. In or about June or July 2014, Mr. Heath was looking at a Facebook photo of Ms. Jasinski and two co-workers in a bed. Mr. Heath stated to Plaintiff that Ms. Jasinski is a "lesbian". Mr. Heath made this statement despite the photo having no intimate or sexual connotation.

80. In or about June or July 2014, Plaintiff walked into Mr. Heath's office as Mr. Heath was distracted and laughing at a Youtube video he was watching on his computer.

81. Upon noticing Plaintiff, Mr. Heath proceeded to replay the video. The substance of the video consisted of a straight male actor pretending to be gay and approaching and kissing or attempting to kiss other men on the street. In one of the incidents on the video, the actor was violently attacked by one of the men he approached.

82. Mr. Heath found this scene extremely humorous and replayed the video numerous times in Plaintiff's presence.

IX. Clown Marketing Event

83. In or about October 2014, Plaintiff and numerous other employees participated in a marketing event organized by Mr. Heath and/or Ms. Cantalupo.

84. The event involved Defendant's employees dressing as clowns and acting in a videotaped skit.

85. While the other employees were permitted to choose different items to wear, Mr. Heath and Ms. Cantalupo required Plaintiff to wear a rainbow colored feathered hat and rainbow colored feathered boa.

86. Mr. Heath also participated in the event and dressed as a sheriff clown with a toy gun.

87. For his skit Plaintiff was instructed by Ms. Cantalupo to act "flamboyant".

88. After the event was filmed and complete, Plaintiff requested the footage of him be deleted.

89. Mr. Kaiser, who was responsible for editing the footage, granted Plaintiff's request and removed the footage.

90. The following is a picture from the event (Plaintiff is located second from the right and Mr. Heath is located third from the left).

X. FMLA Leave

91. As a result of the constant barrage of harassment, derogatory statements, targeting and criticism, Plaintiff started to become severely depressed and found the performance of his duties becoming increasingly difficult.

92. In or about October 2014, an incident occurred in which Mr. Heath screamed in Plaintiff's face in a threatening, ominous and intimidating manner "you're a fucking idiot". This incident was witnessed by numerous employees who were deeply disturbed by the same.

93. Finding the harassment to have become overwhelming, Plaintiff took FMLA leave on or about on October 22, 2014, for treatment of his severe depression that was caused and/or greatly exacerbated by the acts of Mr. Heath and Ms. Cantalupo.

94. At the time of taking leave, Plaintiff submitted a request to Mr. Swing that Mr. Swing be the only individual with knowledge of Plaintiff's condition, treatment and FMLA leave. Mr. Swing agreed with Plaintiff's request.

95. While on FMLA leave, Plaintiff received a letter from Mr. Heath stating that as Plaintiff is considered a key employee his employment may not be reinstated post leave.

96. In response, Plaintiff notified Mr. Heath that he was not deemed a key employee pursuant to federal guidelines.

97. In a revised letter, Mr. Heath removed the section referencing that Plaintiff's employment would not be reinstated.

98. However, Mr. Heath added a new section threatening that Plaintiff's health coverage provided by Defendant would be terminated if Plaintiff did not make a payment immediately.

99. Upon information and belief, Plaintiff was the only employee for which such a payment was expected from while on leave and it was not a practice of the company.

100. Moreover, Plaintiff was not paid during his leave despite other employees being paid during FMLA leave, for example, upon information and belief, Project Manager Gregory Aradjan took FMLA leave a month before Plaintiff and was paid during his leave.

101. In addition, Plaintiff received a separate letter from Mr. Heath criticizing Plaintiff for taking FMLA leave.

102. Specifically, Mr. Heath stated in the letter that due to Plaintiff's absence, Defendant was required to have other employees perform Plaintiff's duties. Mr. Heath further accused Plaintiff of misconduct and performance issues and stated that Plaintiff would have to discuss such issues with Mr. Heath upon Plaintiff's return.

XI. Return From FMLA Leave

103. Plaintiff returned to work from FMLA leave on or about January 2, 2015.

104. After returning from FMLA leave, the work environment became extremely untenable. This included constant targeting, criticism, write-ups, unfriendly treatment in which Mr. Heath and Ms. Cantalupo no longer acknowledged Plaintiff and would not greet him when

passing by, the hiring of a replacement for Plaintiff, the revocation of Plaintiff's computer access and disclosure to workers of Plaintiff's confidential mental health records.

A. Harassment by Curtis Heath

105. Immediately upon returning to work, Plaintiff was berated by Mr. Heath for taking FMLA leave. Mr. Heath stated to Plaintiff "I'm not a doctor, but you appeared fine the day before you left".

106. Mr. Heath further told Plaintiff of the great "financial hardship" Defendant suffered due to Plaintiff's FMLA leave as Defendant had to hire a new full-time HR employee to cover Plaintiff's workload.

107. Mr. Heath additionally stated that Plaintiff's act of going to Mr. Swing for FMLA leave was an act of insubordination against Mr. Heath.

108. On or about January 5, 2015, Plaintiff received a disciplinary report from Mr. Heath. The following was stated in the disciplinary report:

> "Jason has had consistent performance issues throughout 2014. *He was removed from reporting to our VP of Administration (Karen Cantalupo) on April 7th*. Jason reported to the CEO (Bob Swing) for approx. 5 Months. During that time Jason hide [sic] performance issues and *campaigned privately with the CEO for a raise of 15k and a new job title of Director of Human Resources*. As the issues began to surface *the CEO made Jason report to me (SVP of Operations) so I can hold him accountable for his performance*. I have been working with Jason on a weekly basis to help him rectify issues (outlined below). This course of action did not show the improvements required. *Once Jason went out on FMLA* additional performance issues were discovered."
>
> "*Jason failed to meet expectations of weekly updates and attending weekly meetings. Jason failed to communicate with his direct supervisor regarding his FMLA status or pending situation. Jason left the office and then has not communicated with me since. Instead he has chosen to bypass his supervisor and communicate directly with the CEO and my VP of Admin. His blatant disregard for the chain of command is had impacted the business and HR's ability to support its employees.*

> "*I placed Jason on a weekly cadence to help him prioritize his work load. Jason did not improve, actually the opposite. He also began to miss the weekly meeting and avoid me and other meeting that would hold him accountable – (Weekly Staff meeting).*"

109. Mr. Heath reassigned Plaintiff to report to Ms. Cantalupo rather than Mr. Heath. While Ms. Cantalupo did not subject Plaintiff to the same extreme level of harassment as Mr. Heath, she had little knowledge or experience with HR thus making Plaintiff's position more difficult.

110. Additionally, Mr. Heath openly discussed Plaintiff's depression and anxiety with other workers in Plaintiff's presence to Plaintiff's embarrassment and humiliation.

B. Hiring of a New Employee and Revocation of Plaintiff's Computer Access

111. When Plaintiff returned, he discovered a new employee, Deneen Brown, was hired to perform most of Plaintiff's duties.

112. Upon information and belief, Ms. Brown had previously worked at Cablevision with Mr. Heath for ten years.

113. Significantly, Plaintiff's access to the HR Department computer system ("ADP access") was restricted without any valid basis.

114. Since Plaintiff, as the Director of HR, no longer had computer access, he was forced to have Ms. Brown provide him with computer access each time he wanted to log in.

115. As a result of Plaintiff's ADP access being revoked, it became much more arduous for Plaintiff to perform his duties and complete assignments.

116. Moreover, in or about March 2015, while speaking about work, Ms. Brown abruptly asked Plaintiff inappropriately if he had "ever had sex with a woman".

C. Disclosure of Plaintiff's Medical Information and Harassment by Karen Cantalupo

117. In or about January 2015, Plaintiff discovered that his FMLA, mental health records and the letter by Mr. Heath accusing Plaintiff of misconduct were contained in the HR computer system and available to Mr. Heath, Ms. Cantalupo, and numerous other individuals to review.

118. Upon information and belief, it was not a practice of Defendant to place employees medical records who took FMLA leave in the HR computer system.

119. Humiliated by his personal and sensitive health information freely being available to others, Plaintiff made a request to Ms. Cantalupo that the same be removed. Ms. Cantalupo refused, stating to Plaintiff that he need not worry about it as only workers in HR could see it.

120. In or about February 2015, Plaintiff took a week of FMLA leave for a bout of pneumonia. Plaintiff asked Ms. Cantalupo if he could work from home. Ms. Cantalupo denied the request and Plaintiff was not paid for the week he was out sick. Upon information and belief, employees were regularly permitted to work from home when sick without penalty.

121. Additionally, in or about February 2015, Ms. Cantalupo demanded that Plaintiff report to the office on a day of severe inclimate weather, even after Mr. Swing instructed employees to stay home for safety and snow removal purposes at the facility.

XII. Termination

122. On or about March 20, 2015, Plaintiff was called into Mr. Heath's office. Mr. Heath informed Plaintiff that he was terminating him from IVCi for his performance.

123. Mr. Heath then told Plaintiff "I suffered from anxiety disorder as well but it led me to work harder rather than become isolated." Plaintiff's anxiety disorder and isolation are only mentioned in Plaintiff's medical records and were never disclosed to Mr. Heath.

124. Mr. Heath then went on to state that Plaintiff had gained weight, that Plaintiff needed “to go to the gym” and to “take this time to get yourself right”.

125. Plaintiff was escorted off of the premises by Mr. Heath. A few minutes later, an e-mail announcement was made concerning Ms. Brown’s promotion to Director of HR.

XIII. Violations

126. At all relevant times, Defendant maintained control, oversight and authority over the Plaintiff in the terms and conditions of Plaintiff’s employment and were Plaintiff’s employer as defined under Title VII, the ADA, FMLA and NYSHRL.

127. At all relevant times, as Defendant’s Senior Vice President of Operations, Mr. Heath was one of Defendant’s highest ranked officers and/or principals and was of sufficiently high authority in Defendant’s management hierarchy to constitute Defendant’s proxy and/or alter ego.

128. At all relevant times, as Defendant’s Vice President of Administration, Ms. Cantalupo was one of Defendant’s highest ranked officers and/or principals and was of sufficiently high authority in Defendant’s management hierarchy to constitute Defendant’s proxy and/or alter ego.

129. The harassment, ridicule and insult inflicted upon the Plaintiff by Mr. Heath and Ms. Cantalupo based upon Plaintiff’s gender and sexual orientation was sufficiently severe and pervasive as to create a hostile work environment and in violation of Title VII and NYSHRL.

130. At all relevant times, Mr. Swing witnessed and/or participated in various incidents of harassment by Mr. Heath and/or Ms. Cantalupo against Plaintiff and therefore encouraged, condoned and/or approved of such discriminatory treatment.

131. At all relevant times, Mr. Hennen witnessed and/or participated in various incidents of harassment by Mr. Heath and/or Ms. Cantalupo against Plaintiff and therefore encouraged, condoned and/or approved of such discriminatory treatment.

132. At all relevant times, Plaintiff's termination constituted a tangible employment action by Defendant.

133. Defendant's termination of Plaintiff based upon Plaintiff's gender, sexual orientation, taking FMLA leave and/or disability was an act of discrimination in violation of Title VII, NYSHRL, the ADA and FMLA.

134. As a result of the hostile work environment Plaintiff was subjected to and Plaintiff's discriminatory termination, Plaintiff suffered severe emotional distress and mental anguish requiring treatment by a psychiatrist and/or therapist and substantial financial loss.

AS AND FOR THE FIRST CAUSE OF ACTION
(*Title VII Gender Discrimination*)

135. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

136. Plaintiff was an employee within the meaning of Title VII of the Civil Rights Act, 42. U.S.C. § 2000e(f).

137. At all relevant times, Defendant employed in excess of fifteen employees and was an employer within the meaning of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e(b).

138. Pursuant to Title VII, 42 U.S.C. § 2000e-2(a) it is unlawful for an employer to discharge an employee because of such employee's "gender".

139. Plaintiff's rights under Title VII were violated by acts of the Defendant in which Plaintiff was terminated based upon Defendant's belief that Plaintiff exhibited behavior stereotypically inappropriate for a male.

140. The motivating factor for Plaintiff's termination was Plaintiff's gender.

141. But for Plaintiff's gender, Plaintiff would not have been terminated.

142. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

143. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income, lost future earnings and severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE SECOND CAUSE OF ACTION

(*Title VII Hostile Work Environment*)

144. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

145. Pursuant to Title VII, 42 U.S.C. § 2000e-2(a), it is unlawful for an employer to discriminate against any individual with respect to the "compensation, terms, conditions, or privileges of employment because of such individual's . . . gender."

146. Defendant engaged in activities which created a hostile working environment for Plaintiff, including, but not limited to, subjecting Plaintiff to offensive and derogatory comments, unwarranted criticisms and complaints, embarrassment and humiliation based upon Defendant's belief that Plaintiff exhibited behavior stereotypically inappropriate for a male.

147. The treatment of Plaintiff was so severe and pervasive as to alter the terms and conditions of Plaintiff's employment.

148. The motivating factor for the hostile treatment of Plaintiff was Plaintiff's gender.

149. But for Plaintiff's gender, Plaintiff would not have been subject to a hostile work environment.

150. Defendant's severe and pervasive harassment of Plaintiff was intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

151. By engaging in the aforesaid acts, Defendants engaged in an unlawful employment practice as defined by 42 U.S.C. § 2000e-2.

152. As a result of Defendants' unlawful acts, Plaintiff has suffered and continues to suffer severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE THIRD CAUSE OF ACTION
(*ADA Disability Discrimination*)

153. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

154. Plaintiff was an employee within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12111(4).

155. At all relevant times, Defendant employed in excess of fifteen workers and was an employer within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12111(5).

156. Pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12112, it is unlawful for an employer to "discriminate against a qualified individual with a disability because of the disability of such individual in . . . the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

157. At all relevant times, Plaintiff suffered from a physical or mental impairment that substantially limited a major life activity and was a qualified individual with a disability pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12112(8).

158. At all relevant times, Plaintiff was able to perform the essential functions of his position with or without a reasonable accommodation.

159. Defendant violated Plaintiff's rights under the Americans with Disabilities Act by committing numerous adverse acts against Plaintiff, including the termination of Plaintiff's employment and subjecting Plaintiff to offensive and derogatory comments, unwarranted criticisms and complaints, embarrassment and humiliation.

160. The basis or motivating factor for these adverse acts was Plaintiff's disability.

161. But for Plaintiff's disability, Plaintiff would not have been terminated.

162. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

163. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income, lost future earnings and severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE FOURTH CAUSE OF ACTION

(*FMLA Discrimination*)

164. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

165. Plaintiff was an employee within the meaning of the Family Medical Leave Act, 29 U.S.C. § 2611(2).

166. At all relevant times, Defendant employed in excess of fifty workers and was an employer within the meaning of the Family Medical Leave Act, 29 U.S.C. § 2611(4).

167. Pursuant to the Family Medical Leave Act, 29 U.S.C. § 2615, it is unlawful for an employer to "interfere with, restrain, or deny the exercise of or the attempt to exercise" any rights under the FMLA.

168. Pursuant to the Family Medical Leave Act, 29 U.S.C. § 2614(a)(1)(A)-(B), an employee who takes leave under the FMLA is entitled upon their return "to be restored to a position with equivalent employment benefits, pay, and other terms and conditions of employment".

169. Defendant violated Plaintiff's rights under the Family Medical Leave Act by committing numerous adverse acts against Plaintiff, including the termination of Plaintiff's employment, failing to restore Plaintiff to an equivalent position and subjecting Plaintiff to offensive and derogatory comments, unwarranted criticisms and complaints, embarrassment and humiliation.

170. The basis or motivating factor for these adverse acts was Plaintiff taking medical leave under the Family Medical Leave Act.

171. But for taking leave under the Family Medical Leave Act, Plaintiff would not have been terminated.

172. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

173. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income and lost future earnings.

AS AND FOR THE FIFTH CAUSE OF ACTION

(*NYSHRL Gender Discrimination*)

174. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

175. Plaintiff was an employee within the meaning of New York State Human Rights Law, N.Y. Exec. Law § 292(6).

176. At all relevant times, Defendant employed in excess of four employees and was an employer within the meaning of New York State Human Rights Law, N.Y. Exec. Law § 292(5).

177. Pursuant to New York State Human Rights Law, N.Y. Exec. Law § 296, it is unlawful for an employer because of an individual's gender to "discharge from employment such individual."

178. Plaintiff's rights under New York State Human Rights Law were violated by acts of the Defendant in which Plaintiff was terminated based upon Defendant's belief that Plaintiff exhibited behavior stereotypically inappropriate for a male.

179. The motivating factor for Plaintiff's termination was Plaintiff's gender.

180. But for Plaintiff's gender, Plaintiff would not have been terminated.

181. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

182. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income, lost future earnings and severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE SIXTH CAUSE OF ACTION
(*NYSHRL Hostile Work Environment: Gender*)

183. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

184. Pursuant to Title VII, 42 U.S.C. § 2000e-2(a) it is unlawful for an employer to discriminate against any individual with respect to the "compensation, terms, conditions, or privileges of employment because of such individual's . . . gender."

185. Pursuant to New York State Human Rights Law, N.Y. Exec. Law § 296, it is unlawful for an employer because of an individual's gender "to discriminate against such individual in compensation or in terms, conditions, or privileges of employment."

186. Defendant engaged in activities which created a hostile working environment for Plaintiff, including, but not limited to, subjecting Plaintiff to offensive and derogatory comments, unwarranted criticisms and complaints, embarrassment and humiliation based upon Defendant's belief that Plaintiff exhibited behavior stereotypically inappropriate for a male.

187. The treatment of Plaintiff was so severe and pervasive as to alter the terms and conditions of Plaintiff's employment.

188. The motivating factor for the hostile treatment of Plaintiff was Plaintiff's gender.

189. But for Plaintiff's gender, Plaintiff would not have been subject to a hostile work environment.

190. Defendant's severe and pervasive harassment of Plaintiff was intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

191. By engaging in the aforesaid acts, Defendant engaged in an unlawful employment practice as defined by N.Y. Exec. Law § 296.

192. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE SEVENTH CAUSE OF ACTION
(*NYSHRL Sexual Orientation Discrimination*)

193. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

194. Pursuant to New York State Human Rights Law, N.Y. Exec. Law § 296, it is unlawful for an employer because of an individual's sexual orientation to "discharge from employment such individual."

195. Plaintiff's rights under New York State Human Rights Law were violated by acts of the Defendant in which Plaintiff was terminated based upon Plaintiff's sexual orientation.

196. The motivating factor for Plaintiff's termination was Plaintiff's sexual orientation.

197. But for Plaintiff's sexual orientation, Plaintiff would not have been terminated.

198. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

199. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income, lost future earnings and severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE EIGHTH CAUSE OF ACTION
(*NYSHRL Hostile Work Environment: Sexual Orientation*)

200. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

201. Pursuant to New York State Human Rights Law, N.Y. Exec. Law § 296, it is unlawful for an employer because of an individual's sexual orientation "to discriminate against such individual in compensation or in terms, conditions, or privileges of employment."

202. Defendant engaged in activities which created a hostile working environment for Plaintiff, including, but not limited to, subjecting Plaintiff to offensive and derogatory comments, unwarranted criticisms and complaints, embarrassment and humiliation based upon Plaintiff's sexual orientation.

203. The treatment of Plaintiff was so severe and pervasive as to alter the terms and conditions of Plaintiff's employment.

204. The motivating factor for the hostile treatment of Plaintiff was Plaintiff's sexual orientation.

205. But for Plaintiff's sexual orientation, Plaintiff would not have been subject to a hostile work environment.

206. Defendant's severe and pervasive harassment of Plaintiff was intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

207. By engaging in the aforesaid acts, Defendant engaged in an unlawful employment practice as defined by N.Y. Exec. Law § 296.

208. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer severe emotional distress, mental anguish, pain and suffering.

AS AND FOR THE NINTH CAUSE OF ACTION
(*NYSHRL Disability Discrimination*)

209. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

210. Pursuant to New York State Human Rights Law, N.Y. Exec. Law § 296, it is unlawful for an employer because of an individual's disability to "discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment."

211. Defendant committed numerous adverse acts against Plaintiff, including the termination of Plaintiff's employment.

212. The basis or motivating factor for these adverse acts was Plaintiff's disability.

213. But for Plaintiff's disability, Plaintiff would not have been terminated.

214. Defendant's unlawful acts were intentional, willful, malicious and in reckless disregard of Plaintiff's rights.

215. As a result of Defendant's unlawful acts, Plaintiff has suffered and continues to suffer damages, in forms including, but not limited to, lost income, lost future earnings and severe emotional distress, mental anguish, pain and suffering.

WHEREFORE, Plaintiff seeks the following relief:

A. On the First Cause of Action on behalf of Plaintiff against Defendant, for all back pay wages due, future wages, compensatory damages, punitive damages, along with all reasonable attorney fees, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

B. On the Second Cause of Action on behalf of Plaintiff against Defendant, for all compensatory damages, punitive damages, along with all reasonable attorney fees, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

C. On the Third Cause of Action on behalf of Plaintiff against Defendant, for all back pay wages due, future wages, compensatory damages, punitive damages, along with all reasonable attorney fees, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

D. On the Fourth Cause of Action on behalf of Plaintiff against Defendant, for all back pay wages due, future wages, liquidated damages, along with all reasonable attorney fees, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

E. On the Fifth Cause of Action on behalf of Plaintiff against Defendant, for all back pay wages due, future wages, compensatory damages, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

F. On the Sixth Cause of Action on behalf of Plaintiff against Defendant, for all compensatory damages, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

G. On the Seventh Cause of Action on behalf of Plaintiff against Defendant, for all back pay wages due, future wages, compensatory damages, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

H. On the Eighth Cause of Action on behalf of Plaintiff against Defendant, for all compensatory damages, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

I. On the Ninth Cause of Action on behalf of Plaintiff against Defendants, for all back pay wages due, future wages, compensatory damages, costs and interest, in an amount to be determined by this Court but greater than the jurisdictional minimum;

J. Interest;

K. Costs and disbursements; and

L. Such other and further relief as is just and proper.

Dated: Melville, New York
November 10, 2016

Respectfully submitted,
SLATER SLATER SCHULMAN LLP

/s/ ______________________________

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